

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TAYR KILAAB AL GHASHIYAH (KHAN),
f/n/a JOHN CASTEEL,

Plaintiff,

v.

ORDER

07-cv-308-bbc

MATTHEW FRANK, RICHARD SCHNEITER,
JAILOR A. JONES, JAILOR SHARPE,
JAILOR TAYLOR, JAILOR HANFIELD,
JAILOR PRIMMER, JAILOR MICKELSON,
JAILOR ESSER, JAILOR SCULLION and
JAILOR BEARCE

Defendants.

In this case, plaintiff is prosecuting his claims that defendants Taylor, Sharpe, Primmer, Jones, Bearce, Esser, Scullion, Frank and Schneider subjected him to an unconstitutional strip search that included the use of excessive force and was performed in the presence of other prisoners, and that immediately following this incident, defendants Sharpe, Primmer, Schneider, Hanfield and Michaelson put plaintiff in a cell where the conditions were so deplorable they violated plaintiff's Eighth Amendment rights. Defendants have filed an answer and a scheduling conference has been held. Dispositive

motions are due to be filed by March 17, 2008.

Now before the court is plaintiff's "Motion to Dismiss Eric Bearce," that I construe as a motion for voluntary dismissal of Bearce pursuant to Fed. R. Civ. P. 41(a)(2). Rule 41(a)(2) applies in circumstances like this one, where the defendants have already answered the complaint. It states in relevant part,

Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. . . .Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

In support of his motion, plaintiff states that in the course of obtaining responses to his discovery requests, he has learned that Bearce was not personally involved in the incidents about which he complains in this lawsuit. Therefore, he wishes to dismiss Bearce voluntarily. Plaintiff has shown good faith and proper conduct under Fed. R. Civ. P. 11 in requesting defendant Bearce's dismissal upon discovery of evidence satisfying him that Bearce was not involved in violating plaintiff's constitutional rights. I can conceive of no reason why defendant Bearce would object to his dismissal under these circumstances. Therefore, plaintiff's motion will be granted.

ORDER

IT IS ORDERED that plaintiff's motion pursuant to Fed. R. Civ. P. 41(a)(2) to

dismiss defendant Eric Bearce from this action voluntarily is GRANTED.

Entered this 21st day of February, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge